

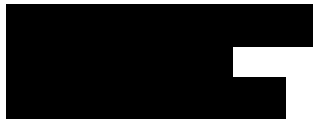


**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241**

**Jim Justice  
Governor**

**Bill J. Crouch  
Cabinet Secretary**

June 30, 2017



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-1642 and 17-BOR-2049

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

Encl Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Angela Walters, Esq., Office of Attorney General  
Heather Keffer, WVDHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW**

██████████,

**Appellant,**

**v.**

**Action Number: 17-BOR-1642 & 17-BOR-2049**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on June 1, 2017, on a request for appeal filed April 13, 2017. The hearing was originally scheduled for May 10, 2017, but was continued at the request of the Appellant's attorney. The hearing was subsequently scheduled for May 16, 2017, but was continued at the request of the Respondent's attorney. The hearing record remained open until June 12, 2017, to allow for the submission of written closing arguments.

The matter before the Hearing Officer arises from the February 24, 2017 decision by the Respondent to deny the Appellant's Adult Medicaid and Supplemental Nutrition Assistance Program (SNAP) benefits.

At the hearing, the Respondent appeared by Angela Walters, Esq., Office of Attorney General. Appearing as witnesses for the Respondent were Heather Keffer, Economic Services Supervisor, WVDHHR, and Tammi Cooley, Front-End Fraud Investigator, WVDHHR. The Appellant was represented by ██████████, Esq. Appearing as witnesses for the Appellant were ██████████, neighbor, and ██████████, neighbor and U.S Postal Service employee. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Notice of Decision dated February 24, 2017 (concerning SNAP ineligibility)
- D-2 Notice of Decision dated February 24, 2017 (concerning Medicaid ineligibility)
- D-3 Written statement of ██████████ dated February 21, 2017
- D-4 Wage History for ██████████
- D-5 Paystubs for ██████████
- D-6 Driver History Inquiry for Appellant
- D-7 Vehicle records from Division of Motor Vehicles

- D-8 Appellant's Facebook posts
- D-9 West Virginia Income Maintenance Manual Chapter 7.10
- D-10 West Virginia Income Maintenance Manual Chapter 6.2
- D-11 Copy of Appalachian Power bill

**Appellant's Exhibits:**

- A-1 Copy of Appellant's driver's license
- A-2 Copy of Appalachian Power bill
- A-3 Vehicle registration and copies of disabled persons parking pass
- A-4 Records from [REDACTED]
- A-5 Photograph of Appellant's camper (recent photo)
- A-6 Photograph of Appellant's camper (recent photo)

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

**FINDINGS OF FACT**

- 1) On February 24, 2017, the Appellant was informed that he was ineligible for Adult Medicaid and Supplemental Nutrition Assistance Program (SNAP) benefits based on excessive household income (see Exhibit D-1).
- 2) At the time of application, the Appellant reported to the Respondent's Economic Services Unit that he was residing alone in a camper on his mother's property at [REDACTED].
- 3) The Respondent's Investigations and Fraud Management (IFM) Unit received a referral concerning the Appellant's living situation, and an investigation ensued in February 2017.
- 4) As a result of the investigation, the IFM investigator concluded that the Appellant was residing with his wife and children at [REDACTED] near [REDACTED] WV.
- 5) The Economic Services Unit evaluated the case based on the results of the IFM investigation, and household income was determined to be excessive for Medicaid and SNAP benefits.
- 6) The Respondent contends that it considered several factors in its determination that the Appellant was residing with his wife and children. That information included the Appellant's joint tax filing status with his wife (no tax returns were submitted as evidence); the address on his driver's license and vehicle registration at the time of the investigation; the statement of a neighbor on [REDACTED]; and the investigator's observation of the state of the Appellant's camper in [REDACTED]. In addition, the Respondent later became aware of a Facebook post allegedly made by the Appellant concerning his change of address.

- 7) The IFM investigator interviewed [REDACTED] resident [REDACTED] (who lives across the street from the Appellant's wife). Exhibit D-3 - a written statement the investigator obtained from Ms. [REDACTED] on February 21, 2017 – indicates that Ms. [REDACTED] stated she had not recently visited the Appellant and his wife, but “sees them enough to know they live there though,” and did not believe they were separated. Ms. [REDACTED] testified during the hearing that she does not recall having contact with the Appellant from September 2016 to February 2017 because of her pregnancy, and she does not know where he lived, slept or kept his clothing.
- 8) During the investigation, the IFM investigator drove by the Appellant's mother's property in [REDACTED]. The investigator testified that she observed a tarp – which was held to the ground with what appeared to be a bungee cord - completely covering the Appellant's camper. As a result, she determined that access to the camper door was improbable. She indicated that she took no photographs of the camper.
- 9) A Driver History Inquiry (D-6) lists the [REDACTED] address for the Appellant. In addition, vehicles registered (D-7) to the Appellant with the Division of Motor Vehicles include an address of [REDACTED], with two of the vehicles titled in 2016 and 2017.
- 10) Exhibit D-8 is a posting on the Appellant's Facebook page – that appeared to have been made from [REDACTED] - indicating that the Appellant moved to [REDACTED] on May 2 (no year listed).
- 11) Exhibits D-11 and A-2 are utility bills from Appalachian Power for January 2017 and April 2017 listing the Appellant's service address as [REDACTED].
- 12) [REDACTED], a resident of [REDACTED] who is employed by the [REDACTED], testified that the Appellant had requested a change of address form from him in the summer of 2015, but was unsure about whether the form was completed. Mr. [REDACTED] indicated that he believed the form was requested because the Appellant was moving to his mother's property.
- 13) The Appellant testified that he resided with his wife at the [REDACTED] address from 1993 until June or July 2015, at which time he moved to his mother's property in [REDACTED]. He stated that he has been separated from his wife since 2015, that he maintains a good relationship with her, and that he regularly babysits his children at the [REDACTED] home, as his wife works long hours at her restaurant management job. The Appellant testified that when his wife returns from work – sometimes not until midnight – he goes back to the camper in [REDACTED]. The Appellant testified that he has slept at the [REDACTED] property every night unless his wife was away at training. The Appellant testified that he keeps his clothing in the camper, stays in the camper 90 percent of the time, and that his pets are at the [REDACTED] property. He stated, however, that he sleeps inside his mother's home at times during periods of cold weather. The Appellant contended that the tarp is on

the camper because the roof was leaking, and that the tarp does not hinder entrance to the camper.

The Appellant testified that he had not changed his address with the DMV because he had been ill and did not realize that it was important, but he has since made the changes. He indicated that one of the vehicles in his name actually belongs to his son. The Appellant stated that he had been very ill after a blood infection traveled through his body and damaged his heart. He stated that he has had strokes and two open heart surgeries, as well as back problems.

- 14) Medical records from [REDACTED] (A-4) indicate that the Appellant was hospitalized for five days in January 2016 for heart surgery. Records reveal that the Appellant told hospital staff he was separated from his wife, but maintained a good relationship with her, and was living with his mother in [REDACTED]. The documentation indicates under the Anticipated Discharge Needs section that the Appellant's family support was his "mother in household."
- 15) The Appellant's address is listed as [REDACTED] on his DMV Motorboat/Vehicle/Physically Disabled registration and driver's license (A-3 and A-1).

### **APPLICABLE POLICY**

West Virginia Income Maintenance Manual Chapter 10.8 states that if an applicant is a tax filer, his Modified Adjusted Gross Income (MAGI) household includes himself, each individual he expects to claim as a tax dependent, and his spouse if residing with the tax filer.

West Virginia Income Maintenance Manual Chapter 9.1.A states that a SNAP Assistance Group must include all eligible individuals who both live together and purchase and prepare their meals together.

### **DISCUSSION**

Policy states that the applicant's Medicaid household consists of the applicant, the tax filer claiming them as a dependent, any other dependents in the tax filer's household, and the applicant's spouse if they reside together. A SNAP Assistance Group includes all eligible individuals who both live together and purchase and prepare their meals together.

The Respondent concluded that the Appellant was residing with his wife and children on [REDACTED] in February 2017, and falsely reported that he resides in a camper on his mother's property in [REDACTED]. However, evidence provided during the hearing is insufficient to support this claim.

The Appellant provided photographs of the camper in its present state, but no photographs of the camper were taken during the investigation. As a result, there is no way for the Hearing Officer to

determine whether or not the Appellant had access to the door, or if it appeared that the camper was inhabited at the time of the investigation.

While some DMV records list the Appellant's address as [REDACTED], the Appellant made reasonable claims that he had been ill, had not changed the address, and did not consider the address change as significant at the time.

The Respondent contends that the Appellant is claimed as a tax dependent by his wife and filed a joint tax return with her (no tax returns were submitted as evidence). That, in itself, is not proof of residence.

While the Respondent allegedly made a Facebook post on May 2 (no year listed) in regard to his address change, it is impossible to determine whether the date of the move was May 2, or whether May 2 was simply the date the post was written.

The investigator interviewed Ms. [REDACTED] who indicated in February 2017 that she observed the Appellant at the [REDACTED] address and believed he lived there. Ms. [REDACTED] testified during the hearing, however, that she had no contact with the Appellant during that time, and had no specific information about where he lived, slept and kept his clothing.

The Appellant contends that he has resided in [REDACTED] since the summer of 2015, but regularly cares for his children because his wife works long hours. Although he is separated from his wife, he indicated that he maintains a good relationship with her, is frequently at her home with their children, and sometimes stays at her residence until late at night when she returns from work. His claim of residency is supported by information provided to [REDACTED] in January 2016 when he told hospital staff he resided in [REDACTED] at his mother's property. Mr. [REDACTED] a [REDACTED] resident and [REDACTED] employee, testified that the Appellant had requested a change of address form from him in the summer of 2015, and Mr. [REDACTED] believed that the Appellant was moving to [REDACTED].

Based on information provided during the hearing, evidence is insufficient to support the Respondent's conclusion that the Appellant resides with his wife and children on [REDACTED].

### **CONCLUSION OF LAW**

Evidence does not support the Respondent's action to deny the Appellant's SNAP and Medicaid benefits based on residency.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to deny SNAP and Adult Medicaid benefits. Because the Appellant's income/asset eligibility cannot otherwise be determined for the programs, the case is REMANDED to the Respondent to determine eligibility retroactive to the date of application and/or redetermination.

**ENTERED this 30th Day of June 2017.**

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**Pamela L. Hinzman  
State Hearing Officer**